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No. 80-478

IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AIRLINE DIVISION; TEAMSTERS LOCAL 2707; MARVIN L. GRISWOLD; TEAMSTERS LOCAL 732,

Petitioners,

v.

TRANS INTERNATIONAL AIRLINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Does a carrier's action for injunctive and equitable relief against a strike remain live and capable of adjudication despite the settlement, by execution of a new collective-bargaining agreement, of all issues out of which the strike and the main action arose, simply because the carrier claims an entitlement to compensatory fines for contempt of a preliminary injunction?

2. Did the district court lack jurisdiction under the Railway Labor and Norris-LaGuardia Acts to enjoin flight engineers employed by the carrier from respecting the picket lines established by its flight attendants, where the engineers' sympathetic action did not arise from an arbitrable dispute between them and the carrier, but was engaged in solely to support the flight attendants' bargaining position in a major dispute over changes in rates of pay, rules and working conditions?

PARTIES IN THE COURT OF APPEALS

The parties before the Ninth Circuit Court of Appeals were the International Brotherhood of Teamsters, Airline Division; Airline and Aerospace Employees, Teamsters Local 732; Airline, Aerospace and Allied Employees, Teamsters Local 2707; Marvin L. Griswold, Secretary-Treasurer, Teamsters Local 2707 (petitioners in this Court); Air Line Pilots Association, International, AFL-CIO (separately petitioning in this Court); and Trans International Airlines, Inc. (respondent in this Court).

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v.

TRANS INTERNATIONAL AIRLINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The International Brotherhood of Teamsters, Airline Division, its affiliated Locals 732 and 2707, and Marvin L. Griswold (collectively "Teamsters"), petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on February 14, 1980.

OPINIONS BELOW

Neither the opinion of the United States District Court for the Northern District of California (A. 9a) [1] nor the opinion of the Ninth Circuit Court of Appeals (A. 31a) is officially reported.

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[1] References to pages in the appendix to this petition are designated "A."

JURISDICTION

The decision and judgment of the Court of Appeals was entered on February 14, 1980 (A. 31a). The International Brotherhood of Teamsters, among others, filed a timely petition for rehearing which was denied on June 27, 1980 (A. 80a).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Railway Labor Act (RLA), §§ 2, First, Fourth, 5, 6 & 204, 45 U.S.C. §§ 152, First, Fourth, 155, 156, 184, and the Norris-LaGuardia Act, § 4, 29 U.S.C. § 104, are reproduced in the Appendix (A. 82a).

STATEMENT OF THE CASE

Trans International Airlines, Inc. (TIA), the respondent, is the corporate survivor of a merger between TIA and Saturn Airways, Inc., which was effectuated on November 30, 1976. When this action was initiated on September 7, 1977, TIA's flight attendants and flight engineers were represented by the Teamsters, and the pilots on the post-merger carrier were represented by the Airline Pilots Association (ALPA). Separate collective-bargaining agreements were in effect covering the former Saturn engineers and pilots. TIA's engineers and pilots were covered by a pre-merger Crewmember Agreement,[2] while the TIA and Saturn flight attendants were covered, until September 8, 1977, by the pre-merger TIA Flight Attendant Agreement.

The major contract dispute out of which this litigation arose began with service of the Teamsters' § 6 Notice, dated January 9, 1976, advising TIA that the flight at-

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[2] TIA's pilots were represented by the Teamsters until December, 1976, when they selected ALPA as their representative.

tendants intended to negotiate changes in their rates of pay, rules and working conditions. Conferences between the parties and efforts by the National Mediation Board to achieve settlement were unsuccessful. On August 8, 1977, concluding that mediation had failed, the Board released the parties to their self-help remedies. Additional efforts to reach settlement during the ensuing 30-day "cooling-off" period failed. Therefore, a strike was called for September 8, 1977.

On the last day of the "cooling-off" period, September 7, TIA filed two actions for injunctive relief.[3] The first complaint sought an injunction against the primary strike by the flight attendants, alleging that the Teamsters had bargained in bad faith; that strike action was foreclosed under the Order of the Civil Aeronautics Board (CAB) approving the TIA-Saturn merger; and that a strike against military operations would violate the expired collective-bargaining agreement. The second case was brought against the Teamsters and ALPA. Injunctive relief was requested to prevent TIA's flight engineers and pilots from honoring the flight attendants' picket lines pending arbitration of the question whether such sympathetic action was contractually permissible.[4]

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[3] Case No. C-77-2010 enjoining the flight attendants from striking military flights, an order the Teamsters appealed (No. 77-3362), and declining to enjoin the strike against commercial flights, an order the carrier cross-appealed (Nos. 77-3395, 77-3781). Case No. C-77-2011 enjoining the flight engineers and pilots with respect to military flights from which orders the Teamsters (No. 77-3363) and ALPA (No. 78-1148) appealed, and refusing injunctive relief with respect to commercial flights from which order TIA cross-appealed (Nos. 77-3395, 77-3781, 78-1232). This petition requests review of the Ninth Circuit's judgment in Nos. 77-3363, 77-3395 and 77-3781, which held that the district court had jurisdiction to enjoin the flight engineers' sympathetic action affecting military and commercial flights.

[4] The contract clauses in issue are set forth in the Appendix (A. 90a).

Decisions of the District Court

The district court declined to enjoin the flight attendants from striking TIA's commercial operations, holding that the case was controlled by RLA principles rather than the CAB's Order, and that the Teamsters Union had not violated its bargaining obligations under § 2, First of the Act. A preliminary injunction was issued against any strike affecting military flights on the basis of a military no-strike clause in the pre-merger TIA flight attendant agreement. Similarly, injunctions to prevent the flight engineers and pilots from respecting the flight attendants' picket lines around commercial flights were denied, whereas sympathetic action affecting military flights was enjoined. Relying on *Buffalo Forge Co.* v. *USW*, 428 U.S. 397 (1976), the court held that the Norris-LaGuardia Act, 29 U.S.C. § 104, prohibits issuance of an injunction against sympathetic action, where the underlying issue (the primary strike) is not arbitrable.

Buffalo Forge is applicable in the RLA context, the court reasoned, because sympathetic action is associated with a related major dispute in which self-help is permissible. Disputes caused by respect for fellow employees' picket lines have elements in common with major disputes that clearly distinguish them from other types of minor disputes in which self-help pending arbitration is impermissible. In addition, the court noted that sympathetic action could be enjoined pending arbitration in every case, if carriers can obtain injunctive relief simply by claiming that such action raises an issue of contract interpretation, thus depriving employees of crucial support from their fellow workers.

These considerations did not prohibit a military injunction, in the court's opinion, because military no-strike clauses appeared in the pilots' and engineers' agreements. Also, due to the military injunction against the flight

attendants, sympathetic action affecting military flights would generate an independent work stoppage in operations exempt from the primary dispute.

Developments Pending Appeal

Cross-motions for stay of the military strike injunctions, and for a temporary injunction against the commercial strike, were argued in the Ninth Circuit Court of Appeals on October 19, 1977. No decision was issued on these motions. The Teamsters were found in civil contempt of the military strike injunctions by the district court on November 1, 1977 (A. 23a), and were found later that week to have purged themselves of contempt (A. 27a). The strike ended in early January, 1978. On January 12, 1978, the parties executed a new collective-bargaining agreement that resolved all issues over which the strike began. TIA's flight attendants selected another union, the Association of Flight Attendants, to represent them on June 4, 1979. The court of appeals issued an order on July 5, 1979, directing the parties to show cause why the appeals should not be dismissed as moot. (A. 29a).

Decision of the Court of Appeals

On appeal, the Ninth Circuit panel held that the case was not mooted by the ending of the strike, the execution of a new collective-bargaining agreement, and loss of the Teamsters' certification to represent the flight attendants. It maintained that the parties had not settled the controversies which spawned this litigation because TIA's claim for compensatory fines for contempt of the preliminary injunction remained outstanding. Passing to the merits, the court of appeals upheld the district court's decision that the Teamsters had not breached their bargaining duty, and held that the lower court had acted without jurisdiction in specifically enforcing the military no-strike clause. The latter two issues are not presented by this petition.

On the other hand, the court of appeals held that the district court had jurisdiction to enjoin the flight engineers and pilots from honoring the flight attendants' picket lines around commercial and military flights until completion of the minor dispute mechanism established their right to engage in sympathetic action. It thought *Buffalo Forge's* reasoning inapplicable to the RLA, stating that considerations such as the avoidance of judicial intrusion into arbitrable disputes, the scope of permissible pre-arbitration remedies, and the effect of its decision on the settlement of disputes by arbitration, are not present here. Not only is arbitration a substitute for sympathetic action, in the Court's view, but maintenance of the status quo is appropriate to prevent a subsequent award from being meaningless where it is "clear" that sympathetic action violates a no-strike pledge.

The case was remanded to the district court for consideration of the contempt issue in light of the language of the no-strike clauses. Rehearing was denied, with the following statement by Judge Goodwin:

> "I would modify the majority opinion to hold that a sympathy strike is a major dispute if the work stoppage with which the sympathy strike is allied is a major dispute. I do not read the Railway Labor Act cases as extending to major disputes the power to enjoin." [A. 81a]

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT BELOW DIRECTLY CONFLICTS WITH A CONTROLLING PRECEDENT OF THIS COURT

The court of appeals' decision directly conflicts with *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418 (1911), where this Court held that the settlement, and consequent mootness, of the main action required dismissal of ancillary civil contempt proceedings.

> "[T]his was a proceeding in equity for civil contempt, where the only remedial relief possible was a fine, payable to the complainant. The company prayed 'for such relief as the nature of its case may require,' and when the main cause was terminated by a settlement of all differences between the parties, the complainant did not require, and was not entitled to, any compensation or relief of any other character. The present proceeding necessarily ended with the settlement of the main cause of which it is a part . . . ." [*Id.* at 451-52.]

Gompers implements familiar principles applicable to civil contempt actions which have never before been questioned. Without a final decree, an order of civil contempt cannot have any finality. *Fox* v. *Capital Co.*, 299 U.S. 105 (1936). The order becomes reviewable only upon appeal from the final decree. *Id.* The vitality of a preliminary injunction is derived from the main controversy; its validity, and that of any ancillary contempt order, depends upon the outcome of the main action. *Worden* v. *Searls*, 121 U.S. 14, 26-27 (1887). If, for any reason, the plaintiff is not entitled to a permanent injunction upon final hearing, the preliminary injunction falls and the civil contempt proceeding must be terminated.[5] *Gompers* v. *Buck's Stove & Range Co.*, *supra*, 221 U.S. 451-52. Termination of the main action necessarily requires termination of every proceeding dependent on it. *Id.* at 451.

Notwithstanding this well-established doctrine, the court below held that the district court is to "consider the question of the legal rights of the parties for the alleged contempt," even though it acknowledged that further proceedings would not otherwise be required (A.

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[5] *Pacific Gamble Robinson Co.* v. *Minneapolis & St. Louis Ry.*, 92 F. Supp. 352, 354 (D. Minn. 1950). See also *Parker* v. *United States*, 153 F.2d 66, 71 (1st Cir. 1946).

65a).[6] At present, then, the district court is to redetermine the propriety of the preliminary injunction it issued against the flight engineers, not for the purpose of entering a permanent injunction (that issue being moot),[7] but solely to adjudicate the contempt proceeding and order the payment of a compensatory fine, if appropriate. Trial on the merits and final judgment thereon, being elements of the mooter main action, have been dispensed with as unnecessary.

The lower court attempted to distinguish *Gompers* on the ground that the parties here had not settled the contempt proceeding. But likewise in *Gompers*, the main action[8] rather than the ancillary contempt proceeding was settled by the parties. The instant case cannot be so distinguished. The court of appeals' disregard of *Gompers*, and its insistence on further litigation of a moot injunction case so a civil contempt proceeding can continue, warrant exercise of this Court's supervisory authority. This case has been set on an impossible course which, if TIA prevails, will lead to an adjudication of contempt issues without a final judgment in the main injunctive action. For entry of a permanent injunction, which TIA neither required nor deserved after the dis-

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[6] The lower court said in reference to the sympathetic action issue: "If the strike were still in force we would remand this aspect of the case to the trial court for further consideration of the propriety of the injunction . . . . The strike having ended, however, such further proceedings are not required" (A. 65a).

[7] Compare *Local 8-6, OCAW* v. *Missouri*, 361 U.S. 363 (1960); *Harris* v. *Battle*, 348 U.S. 803 (1954) and *Barker Painting Co.* v. *Local 734, Painters Union*, 281 U.S. 462 (1930) with *Buffalo Forge Co.* v. *USW*, *supra*, 428 U.S. at 403. Due to their waiver, the petitioners could not have recovered on the injunction bond posted by TIA if this case had been dismissed. For this reason, and because no final decree has been entered here, *Liner* v. *Jafco, Inc.*, 375 U.S. 301 (1964), is inapposite.

[8] *Buck's Stove & Range Co.* v. *Gompers*, 219 U.S. 581 (1911).

pute causing the strike was fully settled, is forbidden by Article III's "case or controversy" requirement.[9] This fundamental consideration cannot be swept aside simply because a claim for civil contempt compensation is made.[10]

Moreover, in departing from settled principles, the decision of the court below necessarily will create confusion among the lower courts. Litigation which should be ended under *Gompers* will be kept alive. This is particularly true in the volatile labor relations field, at least where continued litigation would strengthen the position of one party or the other in terms of their collective-bargaining relationship. Considering the increasing demands on the resources of the lower federal courts, a doctrinal shift away from the rule of *Gompers* would be highly undesirable. The decision of the lower court should be reviewed now to foreclose such a development.

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[9] See authorities cited in note 7 *supra*.

[10] Relying on *Bituminous Coal Operators Ass'n* v. *UMW*, 585 F.2d 586 (3d Cir. 1978), where a civil contempt proceeding was allowed to continue after expiration of the injunction due to a pending damage claim, the court below could "perceive no constitutional distinction" between a claim for a compensatory contempt fine and a claim for damages authorized by statute (A. 39a). But it was the independent claim for damages asserted under § 301 of the LMRA, 29 U.S.C. § 185, that supplied the "case or controversy" which allowed the action in *Bituminous Coal* to proceed after the preliminary injunction had expired. In contrast, this case arises under the RLA which does not authorize the district courts to entertain damage suits for breach of contract. E.g. *Louisville & N. R.R.* v. *Brown*, 252 F.2d 149 (5th Cir. 1958), *cert. denied*, 356 U.S. 949 (1959). Here, as in *Gompers*, nothing remains before the district court other than a contempt proceeding under a preliminary injunction that cannot be made final.

II. THE LOWER COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW, HAVING A PERVASIVE IMPACT ON AIRLINE INDUSTRIAL RELATIONS, CONTRARY TO THE RULINGS OF THIS COURT

A. The lower court's holding that sympathetic action in major disputes can be enjoined until its propriety is determined under the Act's minor dispute mechanism raises a question of major importance to the airline industry. It should be resolved by this Court instead of by a split panel decision of the court of appeals. The route structures of at least 27 carriers,[11] employing approximately 341,100 persons in 1979,[12] and accounting for 97.3 percent of total passenger traffic by certificated air carriers,[13] provide service within the Ninth Circuit. Each of these 27 carriers, which together employ 84.4 percent of the industry's total employment (404,100),[14] has collective-bargaining relationships with unions covering different crafts.[15] Since union representation is sys-

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[11] Thirty-six of the 55 certificated air carriers provide passenger service within the Ninth Circuit, while 27 of these carriers have 2 or more crafts or classes represented by unions. See Flight Itineraries, 6 Official Airlines Guide, North American Edition No. 23 (September 1, 1980); 45 National Mediation Board Ann. Rep. 26, Table 6b (1980); Airline Labor Contract Status Rep., Air Line Pilots Association (July 8, 1980). See also CAB, *Air Traffic Statistics*, *infra* note 13.

[12] See Civil Aeronautics Board, Schedules P-10 on file for carriers through December 31, 1979.

[13] See CAB, *Air Traffic Statistics* (May, 1980), based upon comparison of passenger revenue ton miles flown from May 31, 1979 through May 31, 1980.

[14] *Employment and Earnings*, July, 1980, U.S. DOL, BLS, Vol. 27, No. 7, at p. 97 (SIC 451, 2 includes all carriers, whether or not certificated, and freight operations).

[15] See note 11 *supra*.

temwide under the RLA, with minor exception, the industry's most important bargaining relationships stand to be affected by strike injunction suits filed in the Ninth Circuit under the lower court's ruling.[16] The exceptionally broad impact of the decision below warrants its immediate review.

B. The RLA establishes different mechanisms for the resolution of major disputes, involving changes in rates of pay, rules and working conditions, than for the settlement of minor disputes over grievances. Major disputes must be processed through lengthy procedures consisting of conferences between the parties, mediation by the Board, a proffer of voluntary arbitration, release of the parties to their self-help remedies, and a thirty-day "cooling-off" period. 45 U.S.C. §§ 155, 156. Legal "compulsions go only to insure that [these] procedures are exhausted before resort can be had to self-help . . . ." *BRT* v. *Jacksonville Terminal Co.*, 394 U.S. 369, *rehearing denied*, 394 U.S. 1024 (1969). Following exhaustion, in the absence of a settlement, economic self-help cannot be restrained in major disputes. *Id.* at 384-85.

Minor disputes, however, are resolved by adjustment boards; strikes over disputes properly referable to ar-

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[16] In *Bituminous Coal Operators Ass'n* v. *UMW*, *supra*, 585 F.2d at 592, the Third Circuit Court of Appeals found unpersuasive the district court's reliance on the fact that the employers' facilities were located in many different judicial circuits as a reason for denying injunctive relief, stating:

> "In an action seeking an injunction to enforce a contract, a court of equity acts in personam. As long as the court has jurisdiction over the defendant, the distant situs of the subject matter is not a bar to the exercise of the chancellor's powers. *Massie* v. *Watts*, 10 U.S. (6 Cranch) 148, 158-59, 3 L.Ed. 181 (1810); *Penn* v. *Lord Baltimore*, 1 Ves. 444 (Ch. 1750). Nor is it a bar to relief that a party has chosen for an in personam action a forum which he believes will be favorably disposed toward the selected remedy."

bitration can be enjoined to preserve the board's jurisdiction. *BRT* v. *Chicago, River & Ind. R.R.*, 353 U.S. 30 (1957). An injunction issued for this limited purpose effectuates Congress' intent to provide, in the RLA, machinery for the binding resolution of minor disputes without injuring the basic purpose of the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.* That purpose, this Court said, is "to protect working men in the exercise of organized, economic power, which is vital to collective bargaining." 353 U.S. at 40. *Chicago River* has no application to major disputes over changes in agreements.

The lower court recognized that Chicago River's rationale did not fit the instant case, in which the underlying dispute was major (not resolvable by arbitration) and the adjustment board's jurisdiction over the collateral minor dispute—*i.e.*, whether the engineers' right to honor the flight attendants' picket lines had been contractually waived—was not threatened. But the court below became distracted by what it perceived as a need to avoid disruption to the carrier's operations, and seized upon the Act's minor dispute machinery as a tool for use in halting that disruption. (A. 61a-62a). To limit injunctive relief to situations where "the relief will make it more likely that the dispute will be arbitrated," the panel majority said, "would be to adopt a somewhat crabbed view of the purpose of the RLA minor dispute procedures . . ." (A. 61a n.12). Then, totally disregarding Norris-LaGuardia's anti-injunction policy, the lower court held that sympathetic action integral to *major* disputes can be enjoined pending completion of the Act's minor dispute mechanisms for determining its legitimacy (A. 62a). Not explained was how arbitration could furnish "a reasonable alternative" for the crewmember's support for the flight attendants' position in their major dispute over a new contract. See 353 U.S. at 41.

The panel majority disregarded the precedential force of this Court's decision in *Buffalo Forge Co.* v. *USW*, *supra*, 428 U.S. 397, which held that the express prohibition of § 4 of the Norris-LaGuardia Act barred § 301 injunctive relief against sympathetic action pending decision by the arbitrator. *Id.* at 410. See generally *BRT* v. *Jacksonville Terminal Co.*, *supra*, 394 U.S. at 383. Unaccountably, the lower court relied on *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), in concluding that *Buffalo Forge* does not govern this case. That *Atkinson* was expressly overruled in *Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970), did not trouble the lower court. For it was unwilling to accept this Court's conclusion that the policies underlying the accommodation between the RLA's minor dispute procedures and the Norris-LaGuardia Act are no different than those which determine the availability of injunctive relief under § 301 of the LMRA. 398 U.S. at 252.

Under the decision below, pre-arbitration judicial intervention, in the nature of a preliminary injunction, is permitted where the employer can show a strong likelihood of ultimately prevailing in its interpretation of the no-strike clause and the inadequacy of other remedies. (A. 62a n.12). Thus, the district court is "to hold hearings, make findings of fact, interpret the applicable provisions of the contract and issue injunctions so as to restore the status quo . . . pending exhaustion of the arbitration process . . . ." *Buffalo Forge Co.* v. *USW*, *supra*, 428 U.S. at 410. Without question, even if the temporary injunction does not permanently settle the major dispute in the carrier's favor, as it often does, the adjustment board will "be heavily influenced or wholly preempted" by the court's findings and conclusions in the minor dispute. *Id.* at 412.

Of course, the panel majority attempted to find a policy in the RLA allowing the courts "to try and decide con-

tractual disputes at the preliminary injunction stage," *id.*, going so far as to offer its own interpretation of the collective-bargaining agreement (A. 64a n.14). But no such policy exists. "Congress considered it essential to keep . . . 'minor' disputes within the Adjustment Board and out of the courts . . . ." *Union Pac. R.R.* v. *Sheehan*, 439 U.S. 89, 94, *rehearing denied*, 439 U.S. 1135 (1979). Remarkably, the lower court authorized the very judicial intervention on the merits of minor disputes, on a pre-arbitration basis, that Congress expressly forbade in a post-arbitration setting.[17] The considerations that led this Court, in *Buffalo Forge*, to forbid pre-arbitration injunctions where, as here, there is no underlying dispute other than the strike itself to be arbitrated, apply with equal force to the instant case. The lower court's holding cannot be reconciled with *Buffalo Forge*.

In reality, the decision below has little to do with the arbitral resolution of minor disputes; rather, it is directed against disruption of the carrier's operations. The injunctive relief it sanctions has no purpose other than to minimize the economic pressure employees can exert in major disputes (A. 62a-63a). Thus understood, the lower court's artificial separation of the minor dispute (based on the flight engineers' sympathetic action) from the underlying major dispute, and its announcement that pre-arbitration strikes are prohibited, merely furnished a way for "issuing injunctions that would otherwise be forbidden by the Norris-LaGuardia Act." *Buffalo Forge Co.* v. *USW*, *supra*, 428 U.S. at 411. See also *BRT* v. *Jacksonville Terminal Co.*, *supra*, 394 U.S. at 384, foreclosing injunctive relief after the right of self-help accrues in major disputes.

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[17] Contrary to the lower court's opinion (A. 63a), *BLE* v. *Missouri-K-T R.R.*, 363 U.S. 528 (1960) furnishes no support for its conclusion that an independent action can be maintained for injunctive relief pending operation of the RLA's minor dispute procedures. *Id.* at 531 n.3.

Clearly the lower court's decision cuts to the heart of the federal anti-injunction policy, as embodied in the Norris-LaGuardia Act, without effectuating any corresponding labor policy established by Congress. This result is impermissible and requires review by this Court.

C. The Ninth Circuit panel apparently thought that its decision would have little impact on collective bargaining because the parties are required by the Act to establish adjustment boards (A. 60a). 45 U.S.C. § 184. Yet there is no requirement that unions agree to no-strike clauses. And, without some arguable contractual restraint, sympathetic refusals to cross a picket line would not result in a minor dispute referable to a board of adjustment. The decision below means that no-strike clauses will not be willingly given in bargaining, so the traditional right of employees to honor the picket lines of their fellow workers will be preserved.[18] Also, unions are likely to insist on common expiration dates for all agreements on the properties of individual carriers, thus enabling their simultaneous renegotiation. There will be much strife in the industry as unions pursue, and carriers resist, these new bargaining goals made necessary by the lower court's ruling. Its impact on collective bargaining is therefore very real.

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[18] E.g., *BRT* v. *Atlantic Coast Line R.R.*, 362 F.2d 649 (5th Cir.), aff'd by an equally divided court, 385 U.S. 20 (1966); *BLFE* v. *Florida E. Coast Ry.*, 346 F.2d 673 (5th Cir. 1965); *Northwest Airlines, Inc.* v. *TWU*, 190 F. Supp. 495 (W.D. Wash. 1961). See also *BRT* v. *Jacksonville Terminal Co., supra*, 394 U.S. at 384; 45 U.S.C. § 152, Fourth.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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